

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2178 of 1983
With
CIVIL APPLICATION No. 5224 of 1983
In
FIRST APPEAL No. 2178 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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EXECUTIVE ENGINEER (MAGADALLA PORT) & 2 - Appellant(s)
Versus

CHHIMANBHAI SOMABHAI PATEL & 1 - Defendant(s)

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Appearance :

MS SEJAL K MANDAVIA for Appellants

None for Respondent: 1,

MS LILU K BHAYA for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/06/2007

COMMON ORAL JUDGMENT

1. Ms. Sejal K.Mandavia, learned counsel for the appellants; none for the respondent no.1; Ms. Lilu K. Bhaya, learned counsel for the respondent no.2. Heard.
2. The appellants-owner and driver of the truck, being aggrieved by the judgment and award dated 28th July, 1983 made in M.A.C. Petition No. 298 of 1982 by the learned Member, M.A.C.Tribunal [Main], Surat, awarding a sum of Rs.40,076/-, are before this Court.
3. Ms. Mandavia, learned counsel for the appellants submits that from the defence of the appellants, it would clearly appear that the claimant of his own jumped from the vehicle which led to a fracture in his leg and under the circumstances, he was not entitled to any compensation, according to her, the Insurance Company has been exonerated without any good cause and multiplier of 15 could not be applied to the present case. Ms. Bhaya, learned counsel for the Insurance Company/respondent no.2 submits that the defence of the Insurance Company was that no extra premium was paid by the appellant-owner and under the circumstances, the liability relating to loaders and unloaders could not be covered.
4. From the records, it would appear that the claimant stated on oath that while he was on board, driver of the truck suddenly started the truck which led to his fall and fracture. True it is that the owner has examined two witnesses

to prove otherwise. However, the learned trial court, after relying upon the quality and not quantity of evidence, has recorded a finding in favour of the claimant. This Court, ordinarily would not interfere into the finding of fact. Even otherwise, I have no reason to hold that the claim set up by the claimant that he fell because of sudden starting of the truck is not true statement of fact.

5. The age of the claimant is shown to be 30 years on the date of the accident and under the circumstances, if a sum of Rs. 40,076/- is awarded, same cannot be condemned to be excessive.
6. The Insurance Company, in absence of any contract to reimburse the liability relating to loaders and unloaders, has rightly been exonerated by the learned court below.
7. I have no reason to interfere. The appeal deserves to and is accordingly dismissed. No costs.
8. In view of the dismissal of the appeal, Civil Application No. 5224/83 is also dismissed. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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